

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Saavedra	Team: Squad #1	CCRB Case #: 201906513	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/14/2019 4:00 AM	Location of Incident: § 87(2)(b) § 87(2)(b) In an ambulance; § 87(2)(b)	Precinct: 62	18 Mo. SOL 1/14/2021	EO SOL 8/31/2021	
Date/Time CV Reported Sun, 07/14/2019 5:44 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/25/2019 11:17 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Heriberto Hernandez	01584	932167	062 PCT
2. POM Justin Ruiz	14171	963730	062 PCT
3. An Officer			062 PCT
4. POM Giuseppe Oliveri	28888	939146	062 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Donglun Liu	03241	961897	062 PCT
2. POM Xavier Mercedes	26458	967203	062 PCT
3. POF Tamara Clement	21959	962322	062 PCT
4. POM Michael Nesterwitz	08478	961002	062 PCT
5. POM Chiwai Wong	19582	959380	062 PCT
6. POM Matthew Knudsen	21251	964097	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Heriberto Hernandez	Abuse: Sergeant Heriberto Hernandez entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.SGT Heriberto Hernandez	Abuse: Inside § 87(2)(b) in Brooklyn, Sergeant Heriberto Hernandez forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
C.SGT Heriberto Hernandez	Force: Inside § 87(2)(b) in Brooklyn, Sergeant Heriberto Hernandez used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Justin Ruiz	Force: Inside § 87(2)(b) in Brooklyn, Police Officer Justin Ruiz used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Giuseppe Oliveri	Force: Inside § 87(2)(b) in Brooklyn, Police Officer Giuseppe Oliveri used physical force against § 87(2)(b)	§ 87(2)(b)
F.SGT Heriberto Hernandez	Off. Language: Inside § 87(2)(b) in Brooklyn, Sergeant Heriberto Hernandez made remarks to § 87(2)(b) based on § 87(2)(b)'s perceived mental disability.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G. An Officer	Off. Language: Inside an ambulance, an officer made remarks to § 87(2)(b) based on § 87(2)(b)'s perceived mental disability.	
H.POM Giuseppe Oliveri	Off. Language: Inside § 87(2)(b) Police Officer Giuseppe Oliveri made remarks to § 87(2)(b) based on § 87(2)(b)'s perceived mental disability.	
I.POM Giuseppe Oliveri	Discourtesy: Inside § 87(2)(b) Police Officer Giuseppe Oliveri spoke discourteously to § 87(2)(b)	
J.POM Giuseppe Oliveri	Abuse: Inside § 87(2)(b) Police Officer Giuseppe Oliveri refused to provide his shield number to § 87(2)(b)	

### Case Summary

On July 14, 2020, Lieutenant Matthew Knudsen of the 62<sup>nd</sup> Precinct filed this complaint with IAB on behalf of § 87(2)(b). On July 25, 2019, it was received at the CCRB.

On July 14, 2019, at approximately 4am, § 87(2)(b) had a verbal dispute with her boyfriend, § 87(2)(b) at her home at § 87(2)(b) in Brooklyn. § 87(2)(b) called 911 to request medical attention for § 87(2)(b) as he believed she was suicidal. Sergeant Heriberto Hernandez, Police Officer Justin Ruiz, and Police Officer Giuseppe Oliveri, as well as additional officers, all from the 62<sup>nd</sup> Precinct, arrived on scene and entered § 87(2)(b)'s apartment and removed her to the hospital (**Allegations A and B: Abuse of Authority - § 87(2)(g)**). Sgt. Hernandez grabbed § 87(2)(b)'s hair (**Allegation C: Force - § 87(2)(g)**). PO Ruiz then took § 87(2)(b) to the ground, and PO Oliveri stepped on § 87(2)(b)'s right hand (**Allegations D and E: Force - § 87(2)(g)**). Sgt. Hernandez said to § 87(2)(b) "All EDPs are animals and should be put down" (**Allegation F: Offensive Language - § 87(2)(g)**). While she was being transported in the ambulance, another officer said "All EDPs are animals and should be put down" (**Allegation G: Offensive Language - § 87(2)(g)**). While at the hospital, § 87(2)(b) asked PO Oliveri for his shield number, and he replied, "not only are you crazy, but you're stupid too?" and did not provide it (**Allegation H: Offensive Language - § 87(2)(g)**). **Allegation I: Discourtesy - § 87(2)(g)** **Allegation J: Abuse of Authority - § 87(2)(g)**

Body-worn Camera (BWC) footage was obtained for this case and captures part of this incident. It is included in the case file (Board Reviews 01, 02, 03, 04, 05, 06, 07, 08, 09, and 10).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Heriberto Hernandez entered § 87(2)(b) in Brooklyn.**

**Allegation (B) Abuse of Authority: Inside § 87(2)(b) in Brooklyn, Sergeant Heriberto Hernandez forcibly removed § 87(2)(b) to the hospital.**

**Allegation (C) Force: Inside § 87(2)(b) in Brooklyn, Sergeant Heriberto Hernandez used physical force against § 87(2)(b)**

**Allegation (D) Force: Inside § 87(2)(b) in Brooklyn, Police Officer Justin Ruiz used physical force against § 87(2)(b)**

**Allegation (E) Force: Inside § 87(2)(b) in Brooklyn, Police Officer Giuseppe Oliveri used physical force against § 87(2)(b)**

§ 87(2)(b) testified that she had a verbal argument with § 87(2)(b) inside her apartment. § 87(2)(b) asked § 87(2)(b) if she needed to go to the psychiatric ward, and she replied that she did in order to calm down. § 87(2)(b) then called 911. Officers knocked on § 87(2)(b)'s door and she answered. Sgt. Hernandez told § 87(2)(b) that the officers needed to enter her apartment for safety reasons. § 87(2)(b) told him that her rights were being violated, and shut her door. Officer then entered the apartment alongside several officers. Sgt. Hernandez immediately grabbed § 87(2)(b)'s hair, and together with PO Ruiz, took her to the ground. While she was on the ground, PO Oliveri stepped on her hand. The officers then handcuffed § 87(2)(b). Some time later, § 87(2)(b) lost consciousness, and awoke inside an ambulance wearing a mask and lying on a stretcher (Board Review 16).

§ 87(2)(b) testified that he and § 87(2)(b) got into an argument which resulted in him leaving the apartment building and calling an ambulance, because he had a "feeling" that § 87(2)(b) was not safe on her own and was aware that she had been hospitalized for psychological reasons in the past. Officers arrived as § 87(2)(b) was still on the phone with an operator and told him to stay outside the building. Ten minutes later, officers rolled § 87(2)(b) out of the building on a gurney, with her arms restrained at her sides, and wearing a spit mask. She was then placed in an ambulance and § 87(2)(b) remained at the apartment (Board Review 17).

Audio of § 87(2)(b)'s 911 call revealed that he told the operator that § 87(2)(b) was

suicidal, had been drinking, and had attempted to strangle herself with a shirt three minutes prior to the call (Board Review 11).

§ 87(2)(b)'s medical records from § 87(2)(b) note that she § 87(2)(b) continued to be a danger to herself. § 87(2)(b) stated to a psychiatrist that she was drunk § 87(2)(b). § 87(2)(b)'s blood alcohol level was initially .155 (nearly double the legal limit of .08), and she tested positive for cocaine. § 87(2)(b) was diagnosed with § 87(2)(b).

Sgt. Hernandez's BWC footage shows Sgt. Hernandez and PO Ruiz arrive on scene and speak to § 87(2)(b) for a few seconds before audio engages. § 87(2)(b) is heard telling them that § 87(2)(b) is in the bathroom, and an officer offscreen tells Sgt. Hernandez that she has been barricaded before during previous incidents. The officers enter the building and approach § 87(2)(b)'s door. PO Liu knocks on the door, followed by Sgt. Hernandez. § 87(2)(b) opens the door, and Sgt. Hernandez tells her to come outside. § 87(2)(b) tells the officers what they are doing is illegal and attempts to close the door. Sgt. Hernandez then pushes the door open and officers enter the apartment. PO Ruiz turns § 87(2)(b) around and partially places handcuffs on her. At the 3:10 timestamp in the video player, § 87(2)(b) spits on PO Oliveri. Immediately after, at approximately 3:18, she jerks her body away from PO Ruiz before he finishes handcuffing her. PO Ruiz then grabs her body from behind and takes her to the floor while Sgt. Hernandez grabs hold of the hair on the back of her head. At 3:30, PO Oliveri places his right foot on § 87(2)(b)'s right hand for approximately 6 seconds, after which she pulls it away and places under her body. At 3:57, both Sgt. Hernandez and PO Ruiz hold the back of § 87(2)(b)'s hair while she is face-down on the ground. Officers tell her repeatedly to stop resisting, and to take her hand out from under her body. At 4:40, while § 87(2)(b)'s right hand remains under her body PO Ruiz strikes the upper part of § 87(2)(b)'s right arm with a closed fist approximately 6 times. At approximately 5:50, PO Ruiz grabs § 87(2)(b)'s arms and places them behind her back and handcuffs her. At 6:09, PO Ruiz and Sgt. Hernandez lift § 87(2)(b) to her feet, and Sgt. Hernandez continues to hold the back of her hair. Several minutes later, EMTs bring a stretcher, and officers place her on it. She is then rolled out of the building by EMTs. (Board Review 01).

Sgt. Hernandez testified that he and his partner, PO Ruiz, received a radio run for a suicidal EDP (emotionally disturbed person). The caller stated that his girlfriend barricaded herself in the bathroom and he believed she was going to hang herself. Officers told Sgt. Hernandez that § 87(2)(b) was the EDP and informed him that she had been the subject of EDP calls in the past during which she had also barricaded herself. Sgt. Hernandez knocked on § 87(2)(b)'s door, and she answered. § 87(2)(b)'s pupils were dilated and her eyes were glossy, she had dry cuts on the tops of her hands, and she was talking loudly and swearing at the officers. § 87(2)(b) attempted to close the door, and Sgt. Hernandez put his foot between the door and the frame to prevent her from doing so as he feared for her safety. Sgt. Hernandez entered the apartment alongside PO Ruiz, PO Oliveri, and PO Michael Nesterwitz. § 87(2)(b) immediately spit in Sgt. Hernandez's face. PO Ruiz grabbed § 87(2)(b) and he and PO Oliveri pressed her against a wall, but she freed herself from their grasp and spit in PO Oliveri's face. PO Ruiz grabbed § 87(2)(b) by the waist and took her to the ground. § 87(2)(b) resisted while face-down on the ground by tensing her body and tucking her arms underneath herself and attempting to bite the officers. PO Ruiz struck the upper part of one of her arms several times to get her to release it, and she did so. Sgt. Hernandez grabbed § 87(2)(b)'s hair to prevent her from spitting or biting. After about three minutes, PO Ruiz placed § 87(2)(b)'s arms behind her back and handcuffed her, and he and Sgt. Hernandez lifted her up. Approximately 10 minutes later, EMS arrived, and § 87(2)(b) was placed in an ambulance and taken to the hospital. Sgt. Hernandez did not accompany § 87(2)(b) to the hospital (Board Review 12).

§ 87(2)(g) PO Oliveri testified that he and his partner, PO Donglun Liu, responded to a radio run of a suicidal EDP. Sgt.

Hernandez pushed the door open after § 87(2)(b) attempted to close it, and entered the apartment alongside PO Oliveri PO Ruiz, and other officers. § 87(2)(b) immediately spit on all of them. Sgt. Hernandez and PO Ruiz took her to the ground. PO Oliveri stated that, while she was on the ground, he put his foot on § 87(2)(b)'s hand in order to secure it for handcuffing and gain compliance from her (Board Review 18).

§ 87(2)(g) PO Liu stated that, upon arriving on scene, he and PO Oliveri spoke to § 87(2)(b) who told them that § 87(2)(b) was suicidal. Officers then entered the apartment, and PO Ruiz, and other officers whom PO Liu did not recall were involved in a struggle with § 87(2)(b) and eventually handcuffed her (Board Review 13).

Officers may enter a home without a warrant if they (1) have reasonable grounds to believe there is an emergency at hand and an immediate need for their assistance in the preservation of life or property, (2) are not primarily motivated by an intent to arrest and seize evidence, and (3) have a reasonable basis, approximating probable cause, to associate the emergency with the area to be entered People v. Rossi, 99 A.D. 3d 947 (Board Review 14).

An emotionally disturbed person must be taken into protective custody if an officer believes they are likely to cause serious injury to themselves or others. Officers may use reasonable force necessary to gain control or custody of a mentally ill or emotionally disturbed person NYPD Patrol Guide Section 221-13 (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Offensive Language: Inside § 87(2)(b) in Brooklyn, Sergeant Heriberto Hernandez made remarks to § 87(2)(b) based on § 87(2)(b)'s perceived mental disability.**

§ 87(2)(b) testified that, while at her apartment, Sgt. Hernandez stated “All EDPs are animals and should be put down,” which she understood to be in reference to her (Board Review 16).

Sgt. Hernandez, denied making this statement or hearing another officer do so at any point during this incident. Similarly, PO Oliveri and PO Liu both denied hearing any officer do so. (Board Reviews 12, 13, and 18).

This statement is not heard in any officer's BWC footage obtained for this case (Board Reviews 01, 02, 03, 04, 05, 06, 07, 08, 09, and 10).

§ 87(2)(g)

**Allegation (G) Offensive Language: Inside an ambulance, an officer made remarks to § 87(2)(b) based on § 87(2)(b)'s perceived mental disability.**

§ 87(2)(b) testified that, while inside the ambulance, an officer stated "All EDPs are animals and should be put down." § 87(2)(b) described the subject officer of this allegation as a white male, wearing a blue uniform, in his mid-to-late 40s, heavyset, with dark brown hair, and balding.

Sgt. Hernandez testified that he did not accompany § 87(2)(b) in the ambulance. Both PO Liu and PO Oliveri testified that PO Liu was the only officer to accompany § 87(2)(b) in the ambulance (Board Reviews 12, 13, and 18).

BWC footage obtained for this incident does not capture the incident after § 87(2)(b) was placed in the ambulance (Board Reviews 01, 02, 03, 04, 05, 06, 07, 08, 09, and 10).

PO Liu is an Asian male, § 87(2)(b) old, 6 feet tall, 190 pounds, with full black hair and thus does not fit the description provided by § 87(2)(b) § 87(2)(g)

**Allegation (H) Offensive Language: Inside § 87(2)(b) Police Officer Giuseppe Oliveri made remarks to § 87(2)(b) based on § 87(2)(b)'s perceived mental disability.**

**Allegation (I) Discourtesy: Inside § 87(2)(b) Police Officer Giuseppe Oliveri spoke discourteously to § 87(2)(b)**

**Allegation (J) Abuse of Authority: Inside § 87(2)(b) Police Officer Giuseppe Oliveri refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) testified that, while at § 87(2)(b) she heard PO Oliveri say "All EDPs are animals and should be put down." She asked PO Oliveri to read his shield number to her, as he was far away and her vision was not good. PO Oliveri replied to § 87(2)(b) "not only are you crazy and stupid, but you're blind too" (Board Review 16).

As BWC footage only captured this incident until § 87(2)(b) was placed in an ambulance, it did not show any interaction at § 87(2)(b) (Board Reviews 01, 02, 03, 04, 05, 06, 07, 08, 09, and 10).

PO Oliveri testified that he was present at the hospital, but denied interacting with § 87(2)(b) while there. PO Liu stated that, at the hospital, he asked § 87(2)(b) if he could take photographs of her injuries, but did not have any further interaction with her, and did not recall PO Oliveri interacting with her. Sgt. Hernandez testified that he did not was not present at the hospital (Board Reviews 12, 13, and 18).

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- Sgt. Hernandez has been a member-of-service for 16 years and has been a subject in 10 CCRB complaints and 21 allegations of which two have been substantiated (Board Review 21).
  - CCRB 200907980 involved a substantiated allegation of nightstick as club. The

- Board recommended charges and the NYPD imposed a loss of five vacation days.
- CCRB 201903480 involved a substantiated allegation of failure to provide RTKA card. The Board recommended Command level instructions and the NYPD has not yet imposed discipline.

§ 87(2)(g)

- PO Oliveri has been a member-of-service for six years and has been a subject in six CCRB complaints and 10 allegations, none of which were substantiated. § 87(2)(g)
- PO Ruiz has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 19).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: 1

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date